



January 30, 2019

Senator Reuven Carlyle  
36th District, Seattle  
720 N 35th St. #209  
Seattle, WA 98103

SENT ELECTRONICALLY

Dear Senator Carlyle:

As the nation's leading advertising and marketing trade associations, we collectively represent thousands of companies, from small businesses, to household brands, across every segment of the advertising industry, including a significant number of Washington businesses. Our members engage in responsible data collection and use that benefits consumers and the economy, and we believe privacy deserves meaningful protection in the marketplace.

We strongly support the objectives of SB 5376, the Washington Privacy Act (WPA), but we have certain concerns around the likely negative impact on Washington consumers and businesses from some of the specific language in the bill. We are also concerned that differing privacy laws from state to state will create a fragmented Internet environment for consumers. As such, we support a strong national standard to protect consumer privacy. A patchwork of legislation throughout the United States will create consumer confusion and present significant challenges for businesses trying to comply with these laws. We seek to harmonize privacy protections across the marketplace to help ensure predictable results for consumers and businesses. We ask that the Washington legislature hold hearings on the potential impacts of WPA, and how the proposal fits with the existing federal and state privacy laws, to ensure that consumers and businesses have a predictable, privacy protective, and operational set of standards to rely on.


In these comments we provide you with information about the importance of a data-driven and ad-supported online ecosystem for consumers and the economy, and highlight industry mechanisms to provide consumers control and to protect their privacy. Although we have a number of concerns with the bill, we want to particularly draw your attention to an aspect that needs additional focus: the bill's treatment of pseudonymized data. We believe this category of data can be regulated by the bill in a more tailored fashion to further protect consumers and to ensure that a robust online ecosystem will continue to thrive.

## **I. The Data-Driven and Ad-Supported Online Ecosystem Benefits Consumers and Fuels Economic Growth**

The free flow and responsible use of data fuels the economic engine of the Internet, creating untold consumer benefit.<sup>1</sup> For decades, online data-driven advertising has powered the growth of the Internet by funding innovative tools and services for consumers and businesses to connect and communicate. Data-driven advertising, largely carried out using pseudonymized data, supports and subsidizes the content and services consumers expect and rely on, including video, news, music, and more, at little or no cost to the consumer. Companies also collect data for numerous operational purposes including ad delivery and reporting, fraud prevention, network enhancement, and customization. These uses are necessary for a seamless cross-channel, cross-device consumer experience and a functioning digital economy.

## **II. Our Members Have Long Been Champions of Consumer Privacy**

Consumer trust is vital to our members' ability to successfully operate in the marketplace, and they take that responsibility seriously by engaging in responsible data practices. A prime example of this commitment is through the Digital Advertising Alliance (DAA) YourAdChoices Program and the Network Advertising Initiative (NAI) Code of Conduct. The DAA and NAI codes, for instance, create and enforce self-regulatory principles for companies that collect or use data for interest-based advertising, based on practices recommended by the Federal Trade Commission (FTC) in its 2009 report on online behavioral advertising.<sup>2</sup>

The principles in the DAA code provide consumer transparency and control regarding data collection and use of web viewing data, application use data, and precise location data. The main avenue through which consumers receive disclosures and choices is through the DAA's YourAdChoices icon , which is served in or near ads over a trillion times per month worldwide. The YourAdChoices icon provides transparency in addition to the privacy policy, and clicking on it allows consumers to access simple, one-button tools to control the future collection, use, and transfer of data for interest-based advertising. Millions of consumers have used these privacy-protective tools to express their preferences.

The effectiveness of the program has been recognized by the United States government. At a 2012 White House event, Obama Administration officials including the then-FTC Chairman

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<sup>1</sup> As a result of the advertising-based model that serves as the economic engine of the Internet, the Internet economy in the United States has grown rapidly. According to a recent study conducted for the Interactive Advertising Bureau (IAB) by Harvard Business School Professor John Deighton, the U.S. ad-supported Internet created 10.4 million jobs in 2016 and the industry contributed \$1.121 trillion to the U.S. economy that year, doubling its contribution over just four years and accounting for 6 percent of U.S. gross domestic product. John Deighton, *Economic Value of the Advertising-Supported Internet Ecosystem* (2017) <https://www.iab.com/wp-content/uploads/2017/03/Economic-Value-Study-2017-FINAL2.pdf>.

<sup>2</sup> DAA, *Self-Regulatory Principles for Online Behavioral Advertising* (July 2009); FTC, *FTC Staff Report: Self-Regulatory Principles For Online Behavioral Advertising* (Feb. 2009).

and Secretary of Commerce publicly praised the cross-industry initiative.<sup>3</sup> The DAA also garnered support from then-Acting FTC Chairman Maureen Ohlhausen who stated that the program “is one of the great success stories in the [privacy] space.”<sup>4</sup> FTC Staff has described the Program as “improv[ing] the level of consumer protection in the marketplace.”<sup>5</sup> To date, more than 90 compliance actions for violations of the DAA program have been publicly announced.

### **III. Consumers & Businesses Would Benefit from Clarification Concerning Certain WPA Provisions**

The WPA should distinguish pseudonymized data from individually identifiable information. Pseudonymized data does not include data types that individually identify a person like name, postal address, or email. Instead, pseudonymized data is rendered in such a manner that does not directly identify a specific consumer without the use of additional information, provided that the additional information is kept separately and is subject to technical and organizational measures to ensure that the information is not attributed to an identified or identifiable consumer. This type of data does not raise the same privacy concerns as identifiable information. Privacy laws should incentivize the use of non-personally identifiable information as practicable, including the use of pseudonymized data.

The WPA, as introduced, could have the unintended effect of reducing consumer privacy. By treating innocuous, pseudonymized marketing data in the same manner as data that could directly identify an individual, the WPA would force businesses to collect more data about consumers so that they could actually individually identify a specific person that makes a request. Specially, in order to effectuate consumer rights such as the rights for access, correction, and portability, under the WPA, a business would be forced to associate non-identifiable device data with a specific person seeking to exercise their rights. This approach would remove existing data privacy protections enjoyed by Washington residents.

To help ensure consumer privacy is appropriately protected and that the state of Washington continues to foster innovation and competition in the Washington-based digital ecosystem, we suggest that the WPA distinguish pseudonymized data from individually identifiable information while imposing DAA-like safeguards against the processing of pseudonymized data. In particular, we recommend that the processing of pseudonymized data—data that would not identify a specific consumer—be subject to a mechanism that provides consumers with the ability to exercise choice regarding the processing of such information about an individual consumer’s particular device and its online activities over time and across third-party websites or online services. Data that is not maintained in a pseudonymized or de-

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<sup>3</sup> The White House recognized the Self-Regulatory Program as “an example of the value of industry leadership as a critical part of privacy protection going forward.” Speech by Danny Weitzner, We Can’t Wait: Obama Administration Calls for A Consumer Privacy Bill of Rights for the Digital Age (February 23, 2012).

<sup>4</sup> Katy Bachman, FTC’s Ohlhausen Favors Privacy Self-Regulation, Adweek (June 3, 2013).

<sup>5</sup> In its cross-device tracking report, the FTC staff also praised the DAA for having “taken steps to keep up with evolving technologies and provide important guidance to [its] members and the public. [Its] work has improved the level of consumer protection in the marketplace.” FTC, *Cross-Device Tracking, An FTC Staff Report* (Jan. 2017).

identified fashion would be treated as identifiable information. This approach will help ensure Washington residents continue to benefit from existing privacy choices afforded to them and not result in data related to their online activities becoming identifiable.

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While our members strongly support the WPA's intent to provide consumers enhanced privacy protections, we are concerned that the bill's failure to recognize and account for pseudonymized data will lead to negative impacts for consumers, and the businesses that rely on pseudonymized data for online advertising that fuels the free and low cost services that are provided online. Without clarification and adjustments, the bill could result in reduced privacy for consumers, rather than expanding it, as the bill intends. We stand ready to work with you to find solutions to these and other issues as this bill is considered by the Washington Legislature.

Sincerely,

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cc: Honorable Members of the Senate Committee on Environment, Energy & Technology  
Senate President ProTem Karen Keiser  
Senate Republican Leader Mark Schoesler